

**RESPONSE TO OFFICE ACTION**  
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**REMARKS**

**I. Preliminary Remarks**

Claims 101- 131 are pending in this application. This Amendment and Response amends claims 114-116 and 127-129. Claims 130 and 131 are allowed.

**II. 35 U.S.C. §112 Rejections**

Claims 114-116 and 127-129 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to point out and distinctly claim the invention. The Action states that the use of the term “eccentricity is demonstrated” is unclear. Claims 114-116 and 127-129 have been amended to clarify the invention. The amendments to claims 114-116 and 127-129 are proper under the election of species previously filed on May 30, 2006, where Applicants elected to prosecute the invention of containment figure 1 (D-shaped web) and design C (three-component).

**III. 35 U.S.C. § 102 Rejections**

**A. Merete**

The Action rejects claims 101-109, 110-122 and 124-129 under 35 U.S.C. § 102(a) as being anticipated by the German utility model DE 20011728 held by Merete. Applicants traverse these rejections and request that they be withdrawn. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP §2131. As explained below, Merete does not disclose a device in which the implant stem head may be inserted into the cavity of the liner when the implant stem head is oriented in a first orientation and constrained within the

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cavity of the liner when the implant stem head is oriented in a second orientation such that the implant stem head may articulate within the liner but cannot be removed from the liner once it is attached to the stem. Thus, Merete does not anticipate the claims of the instant invention.

Applicants have commissioned a certified translation of the Merete reference and enclose it herewith. Merete discloses a tripolar spherical head for hip endoprotheses in which the frictional force of an implant head is allocated "not only to the rolling of the outer shell in the acetabulum and a sliding plane in the head but rather to wider additional sliding planes." Merete, p. 2, ¶ 5. Merete is further directed towards endoprotheses in which the centers of rotation of the sliding planes may be eccentric.

Notably absent in the translation of the Merete reference is any teaching or indication as to the way in which the implant stem head comes to lie within the liner; further, the reference contains no information regarding the way in which the implant stem head may be removed from the liner nor if the implant stem head can articulate within the liner, but not be removed therefrom, once attached to a femoral stem. As confirmed by the translation, and in contrast to the present invention, Merete certainly does not teach or suggest a implant which allows an implant stem head to be inserted into the cavity of the liner when the implant stem head is oriented in a first orientation and constrained within the cavity of the liner when the implant stem head is oriented in a second orientation such that the implant stem head may articulate within the liner but cannot be removed from the liner

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once it is attached to the stem. Thus, it can not anticipate the claims of the present invention.

The Action likens the web of the instant claims to the "portion [of Merete] which continues past the hemisphere line which acts to lock the head within the liner." Action, p. 4. But there is no disclosure or suggestion in Merete that the head is, in fact, locked within the liner. As liner 4 is constructed of plastic (see Merete, p. 4, ¶ 1), it is indeed likely that the implant stem head is inserted into and removed from the liner by the application of force which causes the plastic to yield its initial shape. Thus, Merete does not include the limitation of the independent claims 101 and 117 which require that the implant stem head can not be removed from the liner or implant structural member once attached to the femoral stem.

The Action states that it is "unclear whether Merete teaches a D-shaped opening" and requests additional information pertaining to that limitation in the reference. As stated above, Applicants hereby submit the certified translation of the Merete patent in which they find no reference to a D-shaped opening. Applicants have no further information pertaining to the D-shaped limitation.

Applicants respectfully submit that independent claims 1 and 117, and claims 101-116 and 118-129 which depend therefrom, are not anticipated by nor made obvious by Merete. Applicants respectfully request that the rejections be withdrawn.

**III. 35 U.S.C. § 103**

**A. Schryver**

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The Action rejects claims 101-108 and 110-129 under 35 U.S.C. § 103 as being unpatentable over applicant's specification in view of U.S. Patent No. 5,226,917 to Schryver. Applicants note that the previous Action necessitating a response in this matter, dated June 22, 2006, contained the identical rejection and that arguments traversing the rejection were included in Applicants' November 15, 2006 Response. "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." MPEP 707.07(f). The Action, however, does not answer nor respond to Applicants' previous arguments.

Nevertheless, Applicants again traverse this rejection because each and every element as set forth in the claims is not disclosed, alone or in combination, by Schryver or the applicant's specification. MPEP §2142. And even if each element of the claims were present, neither Schryver nor the applicant's specification provide an apparent reason to combine those elements to achieve the device claimed in the application. *See KSR v. Teleflex*, 550 U.S. \_\_\_\_ (2007).

The Action states that Schryver teaches a prosthesis which includes a web which extends around only a portion of the lip of the structural member and that it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the ball and structural member taught by Schryver so that the "ball member is shaped to pass through the socket opening at one particular orientation for fitting the parts together, but once in place and orientated in normal positions of use the ball member cannot be removed from the socket."

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Again, Applicants respectfully do not agree that the extension of element 15 of Schryver would lock the ball of the prosthesis as claimed by the Action. Schryver discloses a prosthesis with a plurality of bores extending between an inner concave surface and an outer convex surface, wherein the bores can function as drill guides after an acetabular cup is placed in a patient. The prosthesis includes a cup body 14 and a plastic liner 15. The Action likens the web of the instant invention to the illustration of plastic liner 15 in Figure 1 and states that the liner extends beyond its equator and that the extension would inherently "lock" the ball.

As seen more clearly in Figure 3 of Schryver, however, while the plastic liner is actually "thickened" along its outside diameter, its inner diameter remains constant around its opening. The "thickening" is not an extension of the lip of the cavity and does not create a web. Thus, Schryver does not disclose a device wherein a web "allows the implant stem head to be inserted into the cavity of the liner when the implant stem head is oriented in the first orientation and constrains the implant stem head within the cavity of the liner when the implant stem head is oriented in a second orientation such that the implant stem head may articulate within the liner but cannot be removed from the liner once it is attached to the stem."

Even assuming element 15 could lock the ball, it would only do so when the recipient of the prosthesis assumed certain positions. As can be seen in Figure 1 of Schryver, the "thickening" that is seen at element 15 is placed in such a way that there is still an opening through which the upper ball portion 13 of the prosthesis can inserted and

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dislocated. Schryver does not disclose a prosthesis in which a web extends beyond the hemisphere of the ball 13 to lock it into place no matter what position was taken by the patient. In contrast, the claims of the instant application disclose a containment system in which an implant stem head can articulate within an implant member but cannot be removed from the implant member once it is attached to a femoral stem. As neither Schryver nor the applicant's specification, alone or in combination, teach or suggest this feature as required by claims 101-108 and 110-129, they cannot render those claims obvious claims and Applicants respectfully request allowance thereof.

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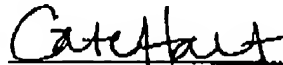
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Applicants respectfully submits that claims 101-129 are in condition for immediate allowance, and request early notification to that effect. If any issues remain to be resolved, the Examiner is respectfully requested to contact the undersigned at 404.532.6938.

Respectfully submitted,



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